

Strike against the ethics and the right of working class patients

Golpe contra a ética e o direito dos pacientes trabalhadores

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The Brazilian Federal Council of Medicine (CFM) published on its Internet page an ethical ruling advice to answer a question proposed by physicians hired by private companies to run their internal Occupational Health and Safety Departments (OHSD). The questioning physicians wished to know if they could inform personal file data from workers to their fellow physician colleagues who are in charge of the expert services to validate work-related sick leaves and work accidents compensations by the National Institute of Social Security (INSS). This could benefit the enterprises to avenge fines and legal suits related to compensation demands from their own workers.

This interest was based on cases in which the INSS expert physicians would recognize causal links between workers' diseases and accidents and their jobs, even in the absence of legal communication by the companies in officially filled paperwork like the Work Accidents Report (CAT). They would act in favor of the companies' interest to deny rights to maintain the job contract upon returning from the sick leaves, to avoid additional taxes for an increase in the number of sick workers and even legal suits due the compensations of work-related accidents and diseases.

The CFM gave publicity to the proposed ruling advice because they 'think' (it was a suggestion for a directive) that the physicians working at the companies may write to the INSS informing that 'workers' personal health data files' may be used to deny causal links between the work and the compensations claims that were recognized as work-related. They did not 'think' that this disclosure of individual data would harm the workers' rights to privacy, intimacy or it could be an ethics abuse (CMF, 2017B).

The same CFM 'thinks' that the workers' health data files are, from 2017 on, 'free to flow' and go to institutional administrative paperworks independently of the consent written by the patients.

One should think twice about this CFM new 'thought'. In recent years, much of their thoughts represent initiatives of elected physicians representatives who targeted population, workers and patient's rights. It is not by mere chance that the Brazilian CFM – the physicians' national board – has been the early supporter to Senators and Federal House Representatives that enacted the 2016 coup d'état to put the illegitimate president Temer in power with the support of the judiciary system.

They are now backing this attack against workers privacy rights on their personal data files that physicians should keep away from disclosure under ethical protection even under judge's subpoenas. This ruling advice came from the technical group under the number 3/2017 is pretty much welcome by trust representatives that decided not to abide by the legal

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rules regarding working contracts.

According to the CFM, from January 2017 on, if the patient is diagnosed with a previous sickness or disease registered in his/her health files, the company's physician may disclose private information to hinder the access to legal rights of compensation and right to keep the job contract. That could be done without written informed consent and against the workers' will. It thus represents the new rare jewel of the crown for medical ethics (CFM, 2017B).

Unsatisfied with the negative impacts of this ruling among workers and the general society, the CFM counselors threatened those who disagree saying that they 'bear no reasons' to speak up and wrote in the CFM's home page against the free right to speech. In this perspective, Brazil goes back to the right of holiness, in which the voice of those in power is above any criticism. The CFM holds the power according to the threatening contents of their notes against those who disagree with their holy ethical group who states that they simply 'bear no reason' (CFM, 2017A).

The CFM counselors had previously declared against medical files disclosure measures from the Ministry of Labor and the extinct and destroyed Ministry of Social Security, when it was questioned in the CFM the Social Security Profile (PPP) proposed to enact written informs on workers previous job exposures profiles. They argued that the written informs would taint laid off workers' personal history disclosing their job exposures to future contractors (CFM, 2004A; CFM, 2004B).

Personal data was a secret by then and they could not be revealed to public health, legal and social security authorities to tell the hazardous history of each company towards their workers. The 'secret' was blatantly attributed to the workers interests despite it favoring employers that decided to expose or not to expose those who they hire. Exposure was then a secret to the CFM, beyond any doubts on self-declared patronal documental statements (CFM, 2004B; SILVA, 2004).

Now, in times that the CFM eagerly supported and early joined the Brazilian coup d'état, that same 'secret' does not exist anymore in relation to personal health data files under the occupational physicians registries. It's all over. The CFM has given the green light to release intimate, health and personal information together with physical and auxiliary exams records. They now serve to avoid companies to face legal suits from the workers.

The same measure that defended employers' interests in 2004 now serves to tear individual rights regarding the disclosing of medical records with no reasons departing from severe epidemiologic risk or to avoiding a potential crime involving the patient's records. The secret now protects the boss and leaves the CFM patients naked.

The Brazilian judiciary and political system is fertile in changing positions in jurisprudence. What is good for the opponents does not apply to friends. One sees these events daily when they praise the desires of the press from the power. When they are not convenient, one may get information by the unofficial alternative press and the Internet Media.

In the case of the ruling advice number '3' from the CFM it was possible to know the ruling only after reading critiques by the social organized movements and workers national central unions. They felt deeply hurt in their solid Constitutional rights (CENTRAIS SINDICAIS, 2017). From the medical ethics principles 'personal health records can only be disclosed after written informed authorization from the patients and in their benefit only'. They can only disclosure against patients' will when their health conditions would allow endangering other people, menace vulnerable persons and help public interest regarding contagion and epidemics. Even then, under such terms, the professional secrecy is mandatory on those who handle that information to practice surveillance and to prevent crimes related with diseases and public health.

With no obligation of secrecy, the

physicians are at the employer's service to open health records, to inform other institutions, and who knows, to add convenient information to protect the company.

It is about time to separate the duties of physicians who may read and write workers health records as well as examining them. They must be different from physicians that carry on company advisor. The two medical specialties may coexist: one advises the company to reduce accidents and diseases regarding costs and incidence. The other gets in medical contact with workers, examine them, ask for ancillary exams and keeps their personal records secret.

A company advisor does not transcribe medical records to the boss, does not do rectal and gynecological exams, and does not take blood samples. The company medical advisor reads reports from other physicians

in whom workers trust, because workers sell their working force, not their bodies, their body fluids, their shame and their intimacy for the company to use. Medical company advisor and occupational physician must be two distinct medical duties with ethical obligation in the same direction. The patients' medical records can only be used in the benefit of the patient him/herself. The patients own the files and the occupational physician of the company is obliged to keep the records safe.

In the meanwhile, if these two physicians duties are not separated for good, the CFM will find a way to rule with two weights for the same secrecy measures and giving advice of ruling to pretend that they defend the public interest when, in fact, they are acting as the *longa manus* of companies and carrying on anti-workers policies. ■

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